

APPENDIX B

FEDERAL AND STATE STATUES, REGULATIONS AND RESTRICTIONS

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This appendix provides very brief descriptions of the applicable statutes and regulations, and of how NNSA/NSO would meet the requirements if the proposed action was implemented.

B.1 General Requirements

B.1.1 National Environmental Policy Act of 1969, 42 United States Code (U.S.C.) 4321, enacted by Public Law (Pub. L.) No. 91-190 as amended

The National Environmental Policy Act (NEPA) of 1969 establishes a policy promoting awareness of the environmental consequences of major federal activities on the environment and consideration of the environmental impacts during the planning and decision making stages of a project. The CEQ and DOE promulgated regulations for implementing NEPA (40 CFR 1500-1508, and 10 CFR 1021, respectively). DOE Order 451.1B, National Environmental Policy Act Compliance Program, establishes DOE internal requirements and responsibilities for implementing the NEPA and the CEQ and DOE-promulgated regulations. This EA was prepared in accordance with NEPA requirements.

B.1.2 Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470ll, enacted by Pub. L. No. 96-95 as amended

The Archaeological Resources Protection Act of 1979 protects archaeological resources located on U.S. public lands and American Indian lands, including sites under DOE control.

B.1.3 National Historic Preservation Act as amended (16 U.S.C. 470 et seq.)

The National Historic Preservation Act, as amended, provides that sites with significant national historic value be placed on the *National Register of Historic Places*. No permits or certifications are required under the Act.

However, if a particular federal activity could impact an historic property, consultation with the Advisory Council on Historic Preservation will usually generate a Memorandum of Agreement, including stipulations that must be followed to minimize adverse impacts.

B.1.4 Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001)

This law directs the Secretary of Interior to assume responsibility for repatriation of federal archaeological collections and collections held by museums receiving federal funds that are culturally affiliated with Native American Tribes. Major actions to be taken under this law include (1) establishing a review committee with monitoring and policy-making responsibilities; (2) developing regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims; (3) overseeing museum programs designed to meet the inventory requirements and deadlines of this law; and (4) developing procedures to handle unexpected discoveries of graves or grave goods during activities on federal or tribal lands.

B.1.5 American Indian Religious Freedom Act of 1978, 42 U.S.C. 1996 et seq., enacted by Pub. L. No. 95-341

The American Indian Religious Freedom Act of 1978 is a policy statement intended to reaffirm American Indian rights regarding religious freedom. The purpose of the Act is to ensure that American Indians have access to and protection for physical locations and resources that are sacred and sometimes required for the practice of American Indian religious rites and ceremonies.

B.1.6 Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This Order establishes regular and meaningful consultation and collaboration with tribal officials in developing federal policies. It also requires each federal agency to have an answerable process to ensure meaningful and timely input by tribal officials in developing Federal policies and other activities that have tribal implications (65 FR 67249).

B.1.7 DOE Order 1230.2, American Indian Tribal Government Policy

This Order provides guidance for consulting and coordinating with Indian tribal governments in compliance with federal statutes and regulations. The policy directs all DOE officials, staff, and contractors regarding fulfilling trust obligations and responsibilities arising from Departmental actions that may potentially affect American Indians' or Alaska Natives' traditional, cultural, and religious values and practices; natural resources; and treaties and other federally recognized and reserved rights.

B.1.8 DOE Policy 141.1, DOE Management of Cultural Resources

This policy ensures that DOE and NNSA programs integrate cultural resource management into their missions and activities, and raises the awareness of the importance of the Department's cultural resource-related legal and trust responsibilities. The policy directs that all DOE programs and missions will be implemented in a manner consistent with federal statutes, regulations, orders, DOE Orders, and implementation guidance protecting cultural resources.

B.1.9 Executive Order 12898 (Environmental Justice)

This Order directs federal agencies to achieve environmental justice by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on

minority populations and low-income populations in the United States and its territories and possessions. The order creates an Interagency Working Group on environmental justice and directs each federal agency to develop strategies within prescribed time limits to identify and address environmental justice concerns.

B.2 Requirements Applicable to Procurement, Transport, Storage, and Use

B.2.1 Toxic Substances Control Act of 1976, 15 U.S.C. 2601, et seq., enacted by Pub. L. No. 94-469 as amended

The Toxic Substances Control Act (TSCA) of 1976 regulates all chemical applications not specifically exempted in the Act. Language in the Act has been interpreted to include microorganisms (i.e., bacteria, fungi, protozoa, microscopic algae, and viruses). TSCA also covers other biologically derived substances, such as chemicals extracted from plants or animals. The applications that are exempted involve food, drugs, cosmetics, animal drugs and feed additives, and pesticides. In addition, national defense activities for which the President has granted a waiver are also exempted.

Under TSCA, the EPA has the authority to prohibit or limit the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical when it is found to pose an unreasonable risk of injury to human health or the environment. It also requires manufacturers, processors, and users who become aware of a substantial threat from a chemical to immediately notify EPA.

B.2.2 Federal Insecticide, Fungicide, and Rodenticide Act of 1972, 7 U.S.C. 136, enacted by Pub. L. No. 92-516 as amended

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1972 establishes an extensive regulatory system for controlling the sale, distribution, and application of pesticides.

Various strains of microorganisms are registered microbial pesticides, including *B. thuringiensis* and *E. herbicola*, which are proposed for release as biological simulants. FIFRA requires that pesticides be labeled in an approved manner and makes it unlawful for anyone to use the pesticide in a manner inconsistent with its labeling. Labeling may also include recommendations for disposal. Other provisions provide for certification of pesticide applicators, and regulations to promote safe storage and disposal. However, Section 5 of FIFRA, and its associated regulations (40 CFR 172) allows for some experimental uses of pesticides. Some of the experimental uses require the issuance of an Experimental Use Permit.

NNSA/NSO would consult EPA regarding use of a registered pesticide for experimental purposes and apply for an Experimental Use Permit as needed. NNSA/NSO would also follow applicable manufacturer recommendations regarding application and disposal.

B.2.3 Hazardous Materials Transportation Regulations

Transport of hazardous materials, substances, and wastes are governed by U.S. Department of Transportation and EPA regulations. These regulations may be found in 49 CFR 100-178, 10 CFR 71, and 40 CFR 262, respectively.

U.S. Department of Transportation regulations contain requirements for identification of a material as hazardous. These regulations may refer to the EPA regulations for identification of material. However, U.S. Department of Transportation hazardous material regulations govern the hazard communication (for example, marking, hazard labeling, vehicle placarding, and emergency response telephone number) and transport requirements (such as required entries on shipping papers or on the EPA waste manifest).

EPA regulations pertaining to hazardous waste transportation are found in 40 CFR Part 262. These regulations deal with the use of the EPA

waste manifest, which is the shipping paper used when transporting RCRA hazardous waste.

DOE issued Order 460.1B, "Packaging and Transportation Safety" and Order 460.2, "Departmental Materials Transportation and Packaging Management" addressing the transportation of hazardous materials.

B.2.4 Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, enacted by Pub. L. No. 99-499

This act was included as Title III of the Superfund Amendments and Reauthorization Act. Under Subtitle A of this Act, Federal facilities, including those owned by the NNSA, provide various information, such as inventories of specific chemicals used or stored and releases that occur from these sites, to the state Emergency Response Commission and to the local Emergency Planning Committee to ensure that emergency plans are sufficient to respond to unplanned releases of hazardous substances.

In addition, under Subtitle B of the Act, material safety data sheet reports, emergency and hazardous chemical inventory reports, and toxic chemical release inventory reports must be provided to appropriate Federal, state, and local authorities.

B.2.5 Occupational Safety and Health Act of 1970, 29 U.S.C. 657, et seq., enacted by Pub. L. 91-596

The Occupational Safety and Health Act (OSHA) of 1970 establishes the authority for assuring, so far as possible, safe and healthful working conditions for employees. OSHA regulations establish specific standards telling employers what must be done to achieve a safe and healthful working environment. DOE emphasizes compliance with these regulations at its facilities and prescribes through DOE orders the Occupational Safety and Health Act standards that contractors shall meet as applicable to work at government-owned, contractor-operated facilities.

B.2.6 Noise Control Act of 1972, 42 U.S.C. 4901-4918, enacted by Pub. L. 92-574 as amended.

The Noise Control Act of 1972, as amended, directs all federal agencies to carry out, "to the fullest extent within their authority," programs within their jurisdictions in a manner that furthers a national policy of promoting an environment free from noise that jeopardizes health and welfare. Any explosive releases would be conducted in compliance with the Act.

B.2.7 DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees

The Order establishes the framework for an effective worker protection program that will reduce or prevent injuries, illnesses, and accidental losses by providing NNSA federal and contractor workers with a safe and healthful workplace. The Order addresses construction safety, fire protection, industrial hygiene, and other areas. The Order calls for compliance with *ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* (most recent edition), when ACGIH TLVs are lower (more protective) than OSHA PELs. (When ACGIH TLVs are used as exposure limits, DOE operations shall nonetheless comply with the other provisions of any applicable OSHA-expanded health standard.)

B.3 Requirements Applicable to Environmental Release

B.3.1 Clean Air Act, 42 U.S.C. 7401, enacted by Pub. L. No. 90-148 as amended

The Clean Air Act, as amended, is intended to "protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 118 of the Clean Air Act, as amended, requires that each federal agency with jurisdiction over any property or facility that might discharge air pollutants, such as the NNSA, comply with "all federal, state,

interstate, and local requirements" with regard to the control and abatement of air pollution.

The law requires EPA to establish national primary and secondary ambient air quality standards as necessary to protect public health, with an adequate margin of safety, from any known or anticipated adverse effects of a regulated pollutant (42 U.S.C. 7409). EPA sets standards for the regulated pollutants, which include particulate matter. The proposed release tests that generate aerosols would have to comply with current particulate matter standards.

The Clean Air Act also requires establishment of standards for emission of hazardous air pollutants (42 U.S.C. 7412). In addition, the Clean Air Act requires specific emission increases to be evaluated to prevent a significant deterioration in air quality (42 U.S.C. 7470). To comply with these requirements, the EPA issued National Emission Standards for Hazardous Air Pollutants that establishes limits of materials such as radioactivity, asbestos, beryllium, and mercury (40 CFR 61). Prior to approval of test plans, the hazardous air pollutant standards applicability would be determined and means for compliance established as necessary.

The Clean Air Act requires each state to develop implementation plans to control air pollution and air quality in that state and submit them for approval to EPA. Under EPA regulations, the State of Nevada has been delegated authority under the Clean Air Act to maintain the Primary and Secondary National Ambient Air Quality Standards (40 CFR 52, Subpart N), to issue permits under the Prevention of Significant Deterioration (40 CFR 52.683), and to enforce performance standards for new stationary sources.

B.3.2 Nevada Air Pollution regulations:

Nevada Administrative Code: Chapter 445B, Air Controls; Air Pollution:

- Definitions-445B.001 through 445B.211

- General Provisions-445B.220 through 445B.283
- Permits Operating Permits Generally-445B.287 through 445B.331
- Class I Operating Permits-445B.3361 through 445B.3447
- Class II Operating Permits-445B.3453 through 445B.3477
- Class III Operating Permits-445B.3485 through 445B.3497
- These regulations implement both state and federal clean air statutes, and identify the requirements for permits for each air pollution source (unless it is specifically exempted) as well as ongoing monitoring requirements. The State of Nevada issued an air quality permit for the entire NTS. The permit is being renewed and discussions between NNSA and the State of Nevada are ongoing. Releases carried out under the action alternatives would be conducted in accordance with the air quality permit in effect at the time.

B.3.3 Clean Water Act of 1977, 42 U.S.C. 1251, et seq. enacted by Pub. L. No. 95-917 [amendments to the Federal Water Pollution Control Act of 1972]

The Clean Water Act of 1977, which amended the Federal Water Pollution Control Act, was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's water." The Clean Water Act prohibits the "discharge of toxic pollutants in toxic amounts" to navigable waters of the United States. Section 313 of the Clean Water Act, as amended, requires all branches of the federal government engaged in any activity that might result in a discharge or runoff of pollutants to surface waters to comply with federal, state, interstate, and local requirements.

B.3.4 Nevada Administrative Code: Chapter 444, Sanitation: Sections 750-840, Sewage Disposal

This regulation establishes the standards, regulations, permits, and requirements for septic tanks and other sewage disposal systems for single-family dwellings, communities, and commercial buildings. NNSA would comply with their wastewater treatment permit when using the existing NTS facilities for treatment of wastewater generated by the action alternatives as well as water borne release tests that involve sewage lagoons.

B.3.5 Endangered Species Act of 1973, 16 U.S.C. 1531-1543, enacted by Pub. L. No. 93-205 as amended

The Endangered Species Act of 1973, as amended, is intended to prevent the further decline of endangered and threatened species and to restore these species and their habitats. The U.S. Departments of Commerce and Interior jointly administer the Act. Section 7 of the Act requires consultation to determine whether endangered and threatened species are known to have critical habitats onsite or in the vicinity of the proposed action. NTS conducts biological surveys as part of its Ecological Monitoring and Compliance Program. The surveys have identified the presence of the threatened desert tortoise. Section 3.2.7.2 discusses how impacts to the desert tortoise would be avoided under the proposed action.

B.3.6 Nevada Administrative Code: Chapter 527, Protection and Preservation of Timbered Lands, Trees, and Flora

This regulation provides for the broad protection of indigenous flora. Those plants, declared to be threatened with extinction, are placed on Nevada's list of fully protected species. A permit is required before engaging in any activities that could result in the removal or destruction of any plant on the list or disturbance of any management area established for a listed plant.

B.3.7 Fish and Wildlife Conservation Act of 1980, 16 U.S.C. 2901, enacted by Pub. L. No. 96-366 as amended

The Fish and Wildlife Conservation Act of 1980 encourages all Federal entities (in cooperation with the public) to protect and conserve the nation's fish and wildlife. NTS's Ecological Monitoring and Compliance Program is designed to ensure compliance with laws and regulations related to plants, animals, and ecosystems.

B.3.8 Migratory Bird Treaty Act of 1918, 16 U.S.C. 703, et seq., 40 Stat. 755

The Migratory Bird Treaty Act of 1918 governs the taking, killing, or possession of migratory birds. The Act prohibits the harm of any migratory birds, their nests, or eggs without authorization by the Secretary of the Interior. Over 20 bird species that are protected under the Act are known to occur just in the Frenchman Flat portion of NTS. NTS conducts biological surveys at part of its Ecological Monitoring and Compliance Program. The surveys identify the presence of breeding birds and identify mitigation actions necessary to comply with the Migratory Bird Treaty Act. The existing Biological Monitoring Plan for the HSC is used to document the activity of birds and the presence of their nests within a downwind impact zone associated with tests performed at the HSC, either before and after each test, each series of tests, or quarterly each year depending upon the materials and quantities being tested. This same approach and existing protocols would be used for the action alternatives.

B.3.9 National Wildlife Refuge System Administration Act of 1966, 42 U.S.C. 668dd, enacted by Pub. No. 91-135 as amended

The National Wildlife Refuge System Administration Act of 1966 provides guidelines and directives for the administration and management of all lands within the system, including "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife

ranges, game ranges, wildlife management areas, or waterfowl production areas." The Act forbids a person to knowingly disturb or injure vegetation or kill vertebrate or invertebrate animals, their nests, or eggs on System lands unless permitted by the Secretary of the Interior. The nearest boundary of the Desert National Wildlife Range (DNWR) is approximately 5 km (8 miles) downwind of NTS's HSC where some biological simulants or chemicals could be released under the action alternatives. Releases from other NTS locations could also be in close proximity of the DNWR. The Biological Monitoring Plan developed in 1996 will continue to be used to verify that tests conducted as part of the action alternatives do not result in downwind air concentrations of toxic chemicals that could harm biota on the DNWR.

B.3.10 DOE Order 450.1, Environmental Protection Program

The Order strives to implement sound stewardship practices that are protective of the air, water, land, and other natural and cultural resources impacted by DOE/NNSA operations and by which DOE/NNSA cost effectively meets or exceeds compliance with applicable environmental; public health; and resource protection laws, regulations, and DOE/NNSA requirements. This objective must be accomplished by implementing Environmental Management Systems (EMSs). An EMS is a continuing cycle of planning, implementing, evaluating, and improving processes and actions undertaken to achieve environmental goals. These EMSs must be part of ISMS established pursuant to DOE P 450.4, Safety Management System Policy.

B.4 Requirements Applicable to Disposal

B.4.1 Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, enacted by Pub. L. No. 94-580 as amended

The Resource Conservation and Recovery Act (RCRA) was enacted to ensure the safe and environmentally responsible management of hazardous and nonhazardous solid waste, and to promote resource recovery techniques to

minimize waste volumes. Regulations issued by EPA under RCRA set forth a comprehensive program to provide "cradle to grave" control of hazardous waste by requiring generators and transporters of hazardous waste, as well as owners and operators of treatment, storage, and disposal facilities, to meet specific standards and procedures. Hazardous waste is defined under RCRA as a waste that poses a potential hazard to human health or the environment when improperly treated, stored, or disposed.

B.4.2 Hazardous Waste and Solid Waste Amendments Act of 1984, 42 U.S.C. 6901, enacted by Pub. L. No. 98-616

The Hazardous Waste and Solid Waste Amendments Act of 1984 are amendments to RCRA that authorize regulations or require that regulations be promulgated on waste minimization, land disposal of hazardous wastes, and underground storage tanks.

Nevada hazardous and solid waste regulations:

Nevada Administrative Code: Chapter 444, Sanitation:

Sections 842-8746, Facilities for the Management of Hazardous Waste

Sections 8752-8788, Program for Reduction of Hazardous Waste

These regulations establish fees, variances, restrictions, and permits and adopt EPA waste management regulations, 40 CFR 260 to 270 as a part of the Nevada Administrative Code.

Nevada Administrative Code: Chapter 444, Sanitation:

B.4.3 Sections 570-748, Solid Waste Disposal

This regulation sets forth the definitions, methods of disposal, collection and transportation standards, and classification of landfills. The regulation also addresses the disposal of special wastes including sewage sludge, septic tank pumpings, and medical wastes.

B.4.4 Hazardous Materials Transportation Regulations

U.S. Department of Transportation regulations addressing hazardous waste are discussed above.

The transportation of infectious substances and biological materials is also addressed in the regulations. The U.S. Department of Transportation uses the World Health Organization (WHO) risk group classifications in identifying infectious substances and biological products that are subject to its Federal transportation regulations (49 CFR 173). The transportation regulations do not apply to Risk Group 1 substances; these wastes can be managed as sanitary solid wastes. The biological simulants to be used in the tests or experiments are classified as Risk Group 1 by the WHO.

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